AMENDED IN ASSEMBLY JANUARY 5, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL No. 1669

Introduced by Committee on Judiciary (Kuehl (Chair), Aroner, Corbett, Hertzberg, Jackson, Knox, Shelley, and Steinberg)

March 15, 1999

An act to ~~add Section 3361 to the Civil Code, relating to works of improvement.~~ *amend Section 2459.6 of the Business and Professions Code, to amend Section 3512 of the Civil Code, to amend Section 182 of the Code of Civil Procedure, to amend Section 918 of the Evidence Code, to amend Section 68110 of the Government Code, to amend Section 1368 of the Health and Safety Code, and to amend Section 1600 of the Probate Code, relating to civil law.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1669, as amended, Committee on Judiciary. ~~Works of improvement: relief~~ *Civil law: nonsubstantive changes.*

Existing law defines terms used in regulating the provision of treatment by osteopathic physicians and surgeons and osteopathic aides.

This bill would make nonsubstantive changes to these provisions.

Existing law lists certain maxims of jurisprudence to aid in the application of the law.

This bill would make nonsubstantive changes to these provisions.

Existing law groups certain miscellaneous provisions regulating the proceedings in courts of justice in a single chapter, and provides that the effect of the chapter heading shall not govern or limit the scope or meaning of the chapter.

This bill would make nonsubstantive changes to these provisions.

Existing law provides that a party to a proceeding, as defined, may base a claim of an alleged error by the court regarding an evidentiary privilege only if the party is the holder of the privilege, or the holder's spouse, as specified.

This bill would make nonsubstantive changes to these provisions.

Existing law requires every judge of a California court to wear a robe when court is in session, and the Judicial Council prescribes the style of such robes.

This bill would make nonsubstantive changes to these provisions.

Existing law provides a comprehensive set of requirements that all health care service plans must meet.

This bill would make nonsubstantive changes to these provisions.

Existing law provides that a guardianship of the person or estate terminates when the ward reaches his or her majority or dies.

This bill would make a nonsubstantive change to these provisions.

~~Existing law provides that, when a breach of a duty has caused no appreciable detriment to the party affected, he or she may recover nominal damages.~~

~~This bill would provide that, in a defined construction defect action in which the plaintiff alleges that the defendant is liable for violating any applicable building standard, as defined, damages shall include an amount necessary to bring the work of improvement into compliance with the applicable building code as of the date that the work of improvement was completed.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. It is the intent of the Legislature to~~

SECTION 1. Section 2459.6 of the Business and Professions Code is amended to read:

2459.6. (a) For the purposes of Section 2459.5 and this section:

(1) ''Osteopathic physician and surgeon'' means a person defined in the Osteopathic Initiative Act.

(2) ''Osteopathic manipulative treatment'' means the therapeutic application of manually guided forces by an osteopathic physician and surgeon to alleviate somatic dysfunction.

(3) ''Somatic dysfunction'' means an impaired or altered function of related components of the somatic system.

(4) An ''osteopathic aide'' means an unlicensed person who assists an osteopathic physician and surgeon in the provision of osteopathic manipulative treatment provided that assistance is rendered under the supervision of an osteopathic physician and surgeon licensed pursuant to the Osteopathic Initiative Act. An aide is not authorized to perform osteopathic manipulative procedures.

(5) ''Under the orders, direction and immediate supervision'' means the evaluation of the patient by the osteopathic physician *and surgeon* prior to the performing of an osteopathic manipulative treatment patient-related task by the aide, the formulation and recording in the patient's record by the osteopathic physician and surgeon of an osteopathic manipulative treatment program based upon the evaluation, and any other information available to the osteopathic physician and surgeon prior to any delegation of a task to an aide. The osteopathic physician and surgeon shall assign only those patient-related tasks that can be safely and effectively performed by the aide. The supervising osteopathic physician and surgeon shall be responsible at all times for the conduct of the aide while he or she is on duty and shall provide continuous and immediate

supervision of the aide. The osteopathic physician and surgeon shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks and shall be readily available at all times to provide advice or instructions to the aide.

(6) A ''patient-related task'' is restricted to assisting the osteopathic physician and surgeon in the rendering of osteopathic manipulative treatment.

(b) Osteopathic aides may not use roentgen rays and radioactive materials.

(c) The board shall require the supervising osteopathic physician and surgeon to conduct orientation of the aide regarding patient-related tasks.

(d) No osteopathic physician and surgeon shall supervise more than two osteopathic aides at any one time.

SEC. 2. Section 3512 of the Civil Code is amended to read:

3512. One must not change his *or her* purpose to the injury of another.

SEC. 3. Section 182 of the Code of Civil Procedure is amended to read:

182. The heading to this chapter shall not be deemed to govern or limit ~~the~~ *its* scope or meaning ~~of this chapter~~.

SEC. 4. Section 918 of the Evidence Code is amended to read:

918. A party may predicate error on a ruling disallowing a claim of privilege only if he *or she* is the holder of the privilege, except that a party may predicate error on a ruling disallowing a claim of privilege by his *or her* spouse under Section 970 or 971.

SEC. 5. Section 68110 of the Government Code is amended to read:

68110. Every judge of a court of this state shall, in open court during the presentation of causes before him *or her*, wear a judicial robe, which he *or she* shall furnish at his *or her* own expense. The Judicial Council shall, by rule, prescribe the style of such robes.

SEC. 6. Section 1368 of the Health and Safety Code is amended to read:

1368. (a) Every *health care service* plan shall do all of the following:

(1) Establish and maintain a grievance system approved by the department under which enrollees may submit their grievances to the plan. Each system shall provide reasonable procedures in accordance with department regulations that shall ensure adequate consideration of enrollee grievances and rectification when appropriate.

(2) Inform its subscribers and enrollees upon enrollment in the plan and annually thereafter of the procedure for processing and resolving grievances. The information shall include the location and telephone number where grievances may be submitted.

(3) Provide forms for grievances to be given to subscribers and enrollees who wish to register written grievances. The forms used by plans licensed pursuant to Section 1353 shall be approved by the commissioner in advance as to format.

(4) Provide subscribers and enrollees with written responses to grievances, with a clear and concise explanation of the reasons for the plan's response. For grievances involving the delay, denial, or modification of health care services, the plan response shall describe the criteria used and the clinical reasons for its decision, including all criteria and clinical reasons related to medical necessity. If a plan, or one of its contracting providers, issues a determination delaying, denying, or modifying health care services based in whole or in part on a finding that the proposed health care services are not a covered benefit under the contract that applies to the enrollee, the decision shall clearly specify the provisions in the contract that exclude that coverage.

(5) Keep in its files all copies of grievances, and the responses thereto, for a period of five years.

(b) (1) (A) After either completing the grievance process described in subdivision (a), or participating in the process for at least 30 days, a subscriber or enrollee may submit the grievance to the department for review. In any case determined by the department to be a case

involving an imminent and serious threat to the health of the patient, including, but not limited to, severe pain, the potential loss of life, limb, or major bodily function, or in any other case where the department determines that an earlier review is warranted, a subscriber or enrollee shall not be required to complete the grievance process or participate in the process for at least 30 days before submitting a grievance to the department for review.

(B) A grievance may be submitted to the department for review and resolution prior to any arbitration.

(C) Notwithstanding subparagraphs (A) and (B), the department may refer any grievance that does not pertain to compliance with this chapter to the State Department of Health Services, the California Department of Aging, the federal Health Care Financing Administration, or any other appropriate governmental entity for investigation and resolution.

(2) If the subscriber or enrollee is a minor, or is incompetent or incapacitated, the parent, guardian, conservator, relative, or other designee of the subscriber or enrollee, as appropriate, may submit the grievance to the department as the agent of the subscriber or enrollee. Further, a provider may join with, or otherwise assist, a subscriber or enrollee, or the agent, to submit the grievance to the department. In addition, following submission of the grievance to the department, the subscriber or enrollee, or the agent, may authorize the provider to assist, including advocating on behalf of the subscriber or enrollee. For purposes of this section, a ''relative'' includes the parent, stepparent, spouse, adult son or daughter, grandparent, brother, sister, uncle, or aunt of the subscriber or enrollee.

(3) The department shall review the written documents submitted with the subscriber's or the enrollee's request for review, or submitted by the agent on behalf of the subscriber or enrollee. The department may ask for additional information, and may hold an informal meeting with the involved parties, including providers who have joined in submitting the grievance,

or who are otherwise assisting or advocating on behalf of the subscriber or enrollee.

(4) The department shall send a written notice of the final disposition of the grievance, and the reasons therefor, to the subscriber or enrollee, the agent, to any provider that has joined with or is otherwise assisting the subscriber or enrollee, and to the plan, within 30 calendar days of receipt of the request for review unless the commissioner, in his or her discretion, determines that additional time is reasonably necessary to fully and fairly evaluate the relevant grievance.

(5) Distribution of the written notice shall not be deemed a waiver of any exemption or privilege under existing law, including, but not limited to, Section 6254.5 of the Government Code, for any information in connection with and including the written notice, nor shall any person employed or in any way retained by the department be required to testify as to that information or notice.

(6) The commissioner shall establish and maintain a system of aging of grievances that are pending and unresolved for 30 days or more, that shall include a brief explanation of the reasons each grievance is pending and unresolved for 30 days or more.

(7) A subscriber or enrollee, or the agent acting on behalf of a subscriber or enrollee, may also request voluntary mediation with the plan prior to exercising the right to submit a grievance to the department. The use of mediation services shall not preclude the right to submit a grievance to the department upon completion of mediation. In order to initiate mediation, the subscriber or enrollee, or the agent acting on behalf of the subscriber or enrollee, and the plan shall voluntarily agree to mediation. Expenses for mediation shall be borne equally by both sides. The department shall have no administrative or enforcement responsibilities in connection with the voluntary mediation process authorized by this paragraph.

(c) The plan’s grievance system shall include a system of aging of grievances that are pending and unresolved

for 30 days or more. The plan shall provide a quarterly report to the commissioner of grievances pending and unresolved for 30 or more days with separate categories of grievances for Medicare enrollees and Medi-Cal enrollees. The plan shall include with the report a brief explanation of the reasons each grievance is pending and unresolved for 30 days or more. The plan may include the following statement in the quarterly report that is made available to the public by the commissioner:

> ''Under Medicare and Medi-Cal law, Medicare enrollees and Medi-Cal enrollees each have separate avenues of appeal that are not available to other enrollees. Therefore, grievances pending and unresolved may reflect enrollees pursuing their Medicare or Medi-Cal appeal rights.''

If requested by a plan, the commissioner shall include this statement in a written report made available to the public and prepared by the commissioner that describes or compares grievances that are pending and unresolved with the plan for 30 days or more. Additionally, the commissioner shall, if requested by a plan, append to that written report a brief explanation, provided in writing by the plan, of the reasons why grievances described in that written report are pending and unresolved for 30 days or more. The commissioner shall not be required to include a statement or append a brief explanation to a written report that the commissioner is required to prepare under this chapter, including Sections 1380 and 1397.5.

(d) Subject to subparagraph (C) of paragraph (1) of subdivision (b), the grievance or resolution procedures authorized by this section shall be in addition to any other procedures that may be available to any person, and failure to pursue, exhaust, or engage in the procedures described in this section shall not preclude the use of any other remedy provided by law.

(e) Nothing in this section shall be construed to allow the submission to the department of any provider complaint under this section. However, as part of a

provider's duty to advocate for medically appropriate health care for his or her patients pursuant to Sections 510 and 2056 of the Business and Professions Code, nothing in this subdivision shall be construed to prohibit a provider from contacting and informing the department about any concerns he or she has regarding compliance with or enforcement of this chapter.

(f) Upon the operation of the Department of Managed Care and the appointment of its director, the responsibilities of the Department of Corporations and its commissioner shall be transferred to the Department of Managed Care and its director.

(g) If Assembly Bill 55 of the 1999–2000 Regular Session is enacted, this section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 7. Section 1600 of the Probate Code is amended to read:

1600. (a) A guardianship of *either* the person or *the* estate or both terminates when the ward attains majority or dies.

(b) A guardianship of the person terminates upon the adoption of the ward or upon the emancipation of the ward under ~~Section7002~~ *Section 7002* of the Family Code.

~~encourage qualified homebuilders to market and offer a variety of homebuyer warranties, which meet specified standards, to purchasers of newly constructed residential homes and to promote quality building standards for residential housing by requiring qualified homebuilders who offer warranties under this specified program to develop and implement a quality assurance program that meets the standards set forth by the Legislature.~~

~~SEC. 2. Section 3361 is added to the Civil Code, to read:~~

~~3361. (a) In a construction defect action in which the plaintiff alleges that the defendant is liable for violating any applicable building standard, as defined in Section 18909 of the Health and Safety Code, as of the date that the work of improvement was completed, damages shall~~

~~include an amount necessary to bring the work of improvement into compliance with the applicable building code as of the date that the work of improvement was completed.~~

~~(b) A ''construction defect action'' shall mean any civil action that seeks monetary recovery against a developer, builder, design professional, general contractor, material supplier, or subcontractor of any work of improvement based upon a claim for alleged defects in the design or construction of the work of improvement.~~

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